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4 DROPLETS, INC.,
5
6 Plaintiff,

7 v.
8

9 YAHOO! INC.,
10 Defendant.
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12 Case No. 12-cv-03733-JST
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14 **CLAIM CONSTRUCTION**
15

16 Re: ECF No. 389
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18 Before the Court is Plaintiff Droplets, Inc.’s opening claim construction brief and
19 Defendants Yahoo!, Inc.’s and Nordstrom, Inc.’s proposed competing constructions for eight
20 terms in U.S. Patent No. 6,687,745 (“the ’745 patent”), ECF Nos. 389, 404.¹ The Court construes
21 the terms as set forth below.

22 **I. BACKGROUND**

23 **A. Procedural History**

24 Plaintiff Droplets, Inc. is a software development corporation that focuses on the creation
25 and delivery of “highly functional and scalable applications over the Internet.” ECF No. 23 ¶ 1.
26 On May 13, 2011 Droplets filed an action in the Southern District of New York, alleging
27 infringement of its ’745 patent. *Droplets, Inc. v. E*Trade Financial Corp.*, No. 2:11-cv-00255
28 (S.D.N.Y. May 13, 2011), ECF No. 1. Shortly thereafter, Droplets filed several infringement
actions in the Eastern District of Texas, which also alleged infringement of its ’745 patent.
Droplets, Inc. v. eBay, Inc., No. 2:11-cv-00401 (E.D. Tex. Sept. 11, 2011), ECF No. 1. In July
2012, the cases against Yahoo!, Inc. and Nordstrom, Inc. were transferred to the Northern District

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1 of California. ECF No. 371-3 at 93-112. These cases were related on April 30, 2013. ECF No.
2 262.

3 On July 29, 2019, Yahoo! and Nordstrom filed motions for preclusion re claim
4 construction. ECF No. 371-1. On October 15, 2019, this Court issued an order granting
5 Defendants' motions and giving preclusive effect to prior constructions of the terms "interactive
6 link," "link," "computer program code," and "program code." ECF No. 412.

7 Droplets filed its opening claim construction brief on August 30, 2019. ECF No. 389.
8 Yahoo! and Nordstrom filed their responsive claim construction brief on September 18, 2019.
9 ECF No. 404. On September 30, 2019, Droplets filed its reply brief. ECF No. 408. The Court
10 conducted a *Markman* hearing on December 12, 2019.

11 **B. The '745 Patent**

12 The '745 patent is titled "System and Method for Delivering a Graphical User Interface of
13 Remote Applications Over a Thin Bandwidth Connection." ECF No. 1-1. The patent issued on
14 February 3, 2004 but claims priority to the September 14, 1999 filing date of a copending patent.
15 *Id.* The patent "relates generally to computer processing systems and, more particularly, to an
16 object-oriented approach to delivering interactive links to applications and information stored in
17 remote sources of a network." *Id.* at col. 1, lines 27-30. It purports to improve the internet
18 experience with "an interactive link on a user's computer which, when selected, retrieves and
19 presents applications and/or information stored at remote locations across the network." *Id.* at col.
20 3, line 66 - col. 4, line 2. It also "include[s] facilities for restoring previous operating states of the
21 application as the application is re-presented at a user's computer." *Id.* at col. 4, lines 2-5.

22 **II. JURISDICTION**

23 This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

24 **III. LEGAL STANDARD**

25 The construction of terms found in patent claims is a question of law to be determined by
26 the court. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc),
27 *aff'd*, 517 U.S. 370 (1996). "[T]he interpretation to be given a term can only be determined and
28 confirmed with a full understanding of what the inventors actually invented and intended to

1 envelop with the claim.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc)
2 (quoting *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)).
3 The “correct construction,” therefore, is one that “stays true to the claim language and most
4 naturally aligns with the patent’s description of the invention.” *Id.* (quoting *Renishaw PLC*, 158
5 F.3d at 1250). While not every claim term must be construed, “[w]hen the parties present a
6 fundamental dispute regarding the scope of a claim term, it is the court’s duty to resolve it.” *O2*
7 *Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

8 “Claim construction seeks to ascribe the ‘ordinary and customary meaning’ to claim terms
9 as a person of ordinary skill in the art would have understood them at the time of invention. ‘The
10 claims themselves provide substantial guidance as to the meaning of particular claim terms.’” *SRI*
11 *Int’l v. Cisco Sys., Inc.*, 930 F.3d 1295, 1304 (Fed. Cir. 2019) (alteration omitted) (quoting
12 *Phillips*, 415 F.3d at 1312, 1314). In some cases, the ordinary meaning of claim language is
13 “readily apparent,” and “claim construction . . . involves little more than the application of the
14 widely accepted meaning of commonly understood words.” *Phillips*, 415 F.3d at 1314. In other
15 cases, “determining the ordinary and customary meaning of the claim requires examination of
16 terms that have a particular meaning in a field of art.” *Id.* Claim construction may deviate from
17 the ordinary and customary meaning of a disputed term only if “a patentee sets out a definition and
18 acts as his own lexicographer” or if “the patentee disavows the full scope of a claim term either in
19 the specification or during prosecution.” *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d
20 1362, 1365 (Fed. Cir. 2012).

21 The “context in which a term is used in the asserted claim,” “[o]ther claims of the patent in
22 question, both asserted and unasserted,” and “[d]ifferences among claims” are all instructive.
23 *Phillips*, 415 F.3d at 1314. “The claims, of course, do not stand alone” and, instead, “must be read
24 in view of the specification,” which is “[u]sually . . . dispositive” and “the single best guide to the
25 meaning of a disputed term.” *Id.* at 1315 (internal quotation marks and citations omitted). Courts
26 “normally do not interpret claim terms in a way that excludes disclosed examples in the
27 specification.” *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1305 (Fed. Cir.
28 2007). Additionally, the Federal Circuit has cautioned that “limitations from the specification are

1 not to be read into the claims.” *Comark Commc’ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1186
2 (Fed. Cir. 1998). Even “if a patent describes only a single embodiment,” the Federal Circuit has
3 “expressly rejected the contention that . . . the claims must be construed as being limited to that
4 embodiment.” *Phillips*, 415 F.3d at 1323. However, “[w]hen the specification makes clear that
5 the invention does not include a particular feature, that feature is deemed to be outside the reach of
6 the claims of the patent, even though the language of the claims, read without reference to the
7 specification, might be considered broad enough to encompass the feature in question.” *E.I. du
8 Pont De Nemours & Co. v. Unifrax I LLC*, 921 F.3d 1060, 1068 (Fed. Cir. 2019) (internal
9 quotation marks and citation omitted).

10 “While courts may also consider extrinsic evidence in claim construction, such evidence is
11 generally of less significance than the intrinsic record” – i.e., the claims, specification, and
12 prosecution history. *Allergan Sales, LLC v. Sandoz, Inc.*, 935 F.3d 1370, 1373 (Fed. Cir. 2019)
13 (internal quotation marks and citation omitted). “[D]ictionaries, and especially technical
14 dictionaries, . . . can assist the court in determining the meaning of particular terminology to those
15 of skill in the art” because they “endeavor to collect the accepted meanings of terms used in
16 various fields of science and technology.” *Phillips*, 415 F.3d at 1318. Courts may also consider
17 treatises and expert and inventor testimony. *Id.* at 1317-18. “However, conclusory, unsupported
18 assertions by experts as to the definition of a claim term are not useful to a court. Similarly, a
19 court should discount any expert testimony that is clearly at odds with the claim construction
20 mandated by the claims themselves, the written description, and the prosecution history, in other
21 words, with the written record of the patent.” *Id.* at 1318 (internal quotation marks and citation
22 omitted).

23 **IV. DISCUSSION**

24 **A. “Interactive Link” and “Link” (Claims 1, 15, 16, 17, 24, 25, 26, 74, and 75)**

25 In its order granting Defendants’ motions for preclusion re claim construction, this Court
26 gave preclusive effect to a prior order construing the terms “interactive link” and “link.” ECF No.
27 412. Accordingly, the Court adopts the following construction of these terms: “computer code
28 that (1) retrieves and presents applications and/or information stored at remote locations across the

1 network when selected by an end user, and (2) includes facilities for restoring previous operating
 2 states of the application as the application is re-presented at a user's computer. An interactive link
 3 cannot be a bookmark, cookie, shortcut, hyperlink or Internet address (URL)."

4 **B. "Computer Program Code" and "Program Code" (Claims 1, 17, and 26)**

5 In its order granting Defendants' motions for preclusion re claim construction, this Court
 6 gave preclusive effect to a prior order construing the terms "computer program code" and
 7 "program code." ECF No. 412. Accordingly, the Court adopts the following construction of these
 8 terms: "Computer Program Code" and "Program Code" have their plain meaning. However, a
 9 "web address" or "hyperlinks" cannot be "computer program code" or "program code."

10 **C. "Operating Environment" (Claims 1, 17, 70, 76, and 77)**

| Droplets's Proposed Construction | Defendants' Proposed Construction |
|--|--|
| "operating system, user interface, or hardware capabilities" | "information about a client computer's operating system, user interface, and hardware capabilities." |

16 The parties agree that the term "operating environment" in claims 1, 17, 70, 76, and 77
 17 requires construction. ECF No. 389 at 21-24; ECF No. 404 at 20-22. The primary dispute
 18 between the parties is whether the term "encompasses any combination of information relating to
 19 'operating system,' 'user interface,' or 'hardware capabilities,' . . . or whether it must contain all
 20 three types of information. ECF No. 389 at 21 (emphasis added); ECF No. 404 at 20. Because the
 21 intrinsic evidence suggests that the inventor intended for the term to be given a broader meaning,
 22 the Court adopts Droplets's proposed construction. *See Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299
 23 F.3d 1313, 1324-25 (Fed. Cir. 2002) ("[I]ntrinsic evidence is the most significant source of the
 24 legally operative meaning of disputed claim language.") (internal quotation marks and citation
 25 omitted).

26 First, Defendants' construction would improperly exclude embodiments disclosed in the
 27 specification. *See Verizon Servs. Corp.*, 503 F.3d at 1305 (Courts "normally do not interpret claim
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1 terms in a way that excludes disclosed examples in the specification.”). The specification includes
2 several embodiments which use various combinations of information related to a computer’s
3 operating system, user interface, *or* hardware capabilities. In one preferred embodiment, the
4 application server receives “operating environment” information “regarding the operating system
5 and hardware capabilities of the particular client computer that requested the droplet-enabled
6 content.” ECF No. 1-1 at col. 8, lines 63-67. In another embodiment, “a droplet communicates
7 one of the differing client environments and, in particular, client [user interface] requirements, to
8 the application server.” *Id.* at col. 9, lines 28-34. “[A] claim interpretation that excludes a
9 preferred embodiment from the scope of the claim is rarely, if ever, correct.” *On-Line Tech. v.*
10 *Bodenseewerk Perkin-Elmer*, 386 F.3d 1133, 1138 (Fed. Cir. 2004) (internal quotation marks and
11 citation omitted).

12 Second, Defendants’ construction would render two dependent claims meaningless. *See*
13 *Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1562 (Fed. Cir. 1991) (“All the limitations of a
14 claim must be considered meaningful.”). Dependent claims 27 and 48 require information
15 regarding the “operating system and hardware capabilities” of the client computer(s). ECF No.
16 389-2 at 31 (emphasis added). If independent claims 1 and 17 already required that an operating
17 environment consist of information about the operating system, user interface, *and* hardware
18 capabilities, the limitations in claims 27 and 48 would be rendered meaningless. Additionally, the
19 presence of the “operating system and hardware capabilities” limitation in these dependent claims
20 gives rise to the presumption that this limitation is not contained in independent claims 1 and 17.
21 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (“[T]he presence of a dependent
22 claim that adds a particular limitation gives rise to a presumption that the limitation in question is
23 not present in the independent claim.”). Defendants correctly note that this is only a presumption.
24 ECF No. 404 at 22. Nevertheless, when considered in concert with the aforementioned intrinsic
25 evidence, demonstrates that the term “operating environment” does not necessitate all three types
26 of information.

27 Defendants’ proposed construction also includes the prefatory phrase “information about a
28 client computer’s . . .” ECF No. 404 at 20. Defendants’ responsive brief, however, offers no

1 justification for the inclusion of this prefatory language. *Id.* at 20-22. Droplets argues, and the
 2 Court agrees, that the proposed prefatory phrase is unnecessary and superfluous. Therefore, the
 3 Court will not include that language in its construction.

4 In sum, the Court construes the term “operating environment” to mean “operating system,
 5 user interface, or hardware capabilities.”

6 **D. Preambles of Claims 1 and 17**

| Droplets's Proposed Construction | Defendants' Proposed Construction |
|----------------------------------|-----------------------------------|
| Preambles are not limiting | Preambles are limiting |

11 The parties originally disputed whether the preambles to claims 1 and 17 are limiting.
 12 “Generally, the preamble does not limit the claims.” *Georgetown Rail Equip. Co. v. Holland L.P.*,
 13 867 F.3d 1229, 1236 (Fed. Cir. 2017) (quoting *Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d
 14 1336, 1346 (Fed. Cir. 2002)). A preamble may be limiting when: (1) “it recites essential structure
 15 or steps,” (2) “claims depend on a particular disputed preamble phrase for antecedent basis,” (3)
 16 “the preamble is essential to understand limitations or terms in the claim body,” (4) “the preamble
 17 recites additional structure or steps underscored as important by the specification,” or (4) “there
 18 was clear reliance on the preamble during prosecution to distinguish the claimed invention from
 19 the prior art.” *Id.* (internal quotation marks and alterations omitted) (citing *Catalina Marketing*
 20 *Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (2002)). A preamble is not a claim
 21 limitation, however, when “the claim body ‘defines a structurally complete invention … and uses
 22 the preamble only to state a purpose or intended use for the invention.’” *Id.* (citing *Rowe v. Dror*,
 23 112 F.3d 473, 478 (Fed. Cir. 1997)).

24 The parties now agree that the preambles to claims 1 and 17 are not limiting. ECF No.
 25 423-1 at 1. The Court adopts the parties’ agreed construction.

E. “Presentation Information for Presenting an Application” and “Presentational Information” (Claims 1, 17, and 26)

| Droplets' Proposed Construction | Defendants' Proposed Construction |
|--|-----------------------------------|
| Plain meaning. No construction needed. | Literal language. |

While the parties initially proposed competing constructions for the terms “presentation information for presenting an application” and “presentational information,” they now agree that these words should be afforded their plain meaning. ECF No. 404 at 23; ECF No. 408 at 14. The Court finds that the literal language is sufficiently clear for a lay juror to understand. Therefore, it agrees that these terms require no construction.

F. “Presenting Applications” and Variations (Claims 1, 17, and 26)

| Droplets's Proposed Construction | Defendants' Proposed Construction |
|--|--|
| “presenting an interface enabling interaction with a remotely executing application” | “presenting an interface enabling interaction with an application” |

The parties agree that the term “presenting applications”² requires construction. ECF No. 389 at 27; ECF No. 404 at 24; ECF No. 408 at 14. The primary dispute between the parties is whether applications are executed remotely. ECF No. 404 at 25; ECF No. 408 at 14-16. Because both intrinsic and extrinsic evidence suggest that applications may be executed locally, the Court will adopt Defendants’ proposed construction.

First, the specification discloses embodiments in which an application executes locally. In one preferred embodiment, “standard operating system interfaces are utilized to access, create, control and manipulate features and functions of the client computer [] such as, . . . any integration

² The parties have also identified the following variations of “presenting applications” to which the Court’s construction will apply: “presenting the application,” “presenting said invoked application,” and “presenting of the application.” ECF No. 389 at 27; ECF No. 404 at 24; ECF No. 408 at 14.

1 between the remotely executing applications, droplets, *locally executing application* and
2 underlying operating system. ECF No. 1-1 at col. 11, lines 22-30 (emphasis added). In another
3 embodiment, “[t]he locally installed application [] may be invoked to execute on the client
4 computer [] by selecting the link.” *Id.* at col. 11, lines 46-51. Including Droplets’s proposed
5 “remotely executing” language in the construction of “presenting applications” would result in the
6 exclusion of these preferred embodiments. *On-Line Tech.*, 386 F.3d at 1138 (“[A] claim
7 interpretation that excludes a preferred embodiment from the scope of the claim is rarely, if ever,
8 correct.”) (internal quotation marks and citation omitted).

9 Second, in previous litigation involving the ’745 patent, Droplets argued that the claims are
10 not limited to remotely executing applications. In *Droplets, Inc. v. Adobe Systems, Inc.*, 2:06-cv-
11 307 (E.D. Tex.), Droplets argued that “*some* ‘processing’ of the ‘application’ may take place on
12 the client.” ECF No. 405-12 at 15 (emphasis in original). In *Droplets, Inc. v. E*Trade Financial
Corp.*, No. 12-cv-2326 (S.D.N.Y.), Droplets argued that the “specification provides support for
13 ‘applications’ stored on a remote server being downloaded to, and *executed on, a user’s local
device.*” *Id.* at 13. It asserted that the specification contains “bountiful support for at least some
14 local execution,” ECF No. 405-6 at 20, and that “Droplets did not disclaim a portion of an
15 ‘application’ executing locally.” ECF No. 405-12 at 14-15. While extrinsic evidence “is
16 generally of less significance than the intrinsic record,” courts “may also consider [such evidence]
17 in claim construction.” *Allergan Sales*, 935 F.3d at 1373 (internal quotation marks and citation
18 omitted).

19 Droplets argues that “Defendants are unable to cite evidence that suggests the presented
20 application may be executed *exclusively* locally.” ECF No. 408 at 15 (emphasis added). While
21 true, this fact is irrelevant. Defendants do not propose a construction which mandates “exclusively
22 local” execution of applications. Rather, Defendants argue that the term’s construction should not
23 be limited to remotely-executing applications because “at least [a] portion” of the execution takes
24 place locally. ECF No. 404 at 25-26. The Court agrees and finds that both intrinsic and extrinsic
25 evidence weigh against limiting the term’s construction to remotely-executing applications.
26 Accordingly, the Court construes the term “presenting applications” and its variations as

“presenting an interface enabling interaction with an application.”

G. “Presentation Client Program Code” and “Presentation Client” (Claims 17 and 26)

| Droplets's Proposed Construction | Defendants' Proposed Construction |
|---|--|
| <p>“platform independent software, running on a client, that can present remotely stored applications and that can transmit user input to remotely stored applications”</p> | <p>“platform independent software, running on a client computer, that can (1) process user interface specifications for an application and (2) allow user interaction with that application”</p> |

The parties agree that the terms “presentation client program code” and “presentation client” in claims 17 and 26 require construction. ECF No. 389 at 27-28; ECF No. 404 at 28-29. The primary disputes between the parties are (1) whether the presentation client can operate with *remotely stored* applications and (2) whether the user input can be *transmitted*. The Court finds that the intrinsic evidence supports the inclusion of both “remotely stored” and “transmit” in the construction of these terms.

Droplets's proposed construction states that the presentation client "can" operate with "remotely stored applications." ECF No. 408 at 17. Defendants oppose this language on the basis that the "specification does not limit presentation clients to operate *only* with 'remotely stored' applications, and claims that are directed to 'remotely stored' applications." ECF No. 404 at 29. However, the use of "can" does not limit these operations and interactions to *only* remotely stored applications. It simply recognizes the possibility of operations and interactions with remotely stored applications, which is consistent with the language presented in the bodies of claims 17 and 26. As Defendants acknowledge, these claims envision the remote storage of applications. *Id.* Claim 26, for example, recites "computer program code for presenting . . . applications . . . stored in a first of said plurality of server computers."

Droplets's proposed construction also states that user input can be "transmit[ted]" to remotely stored applications. ECF No. 408 at 17. Defendants oppose this language because the specification does not "require user input to be 'transmitted' from the presentation client" and

1 “[t]here is no need to transmit all user input for processing.” ECF No. 404 at 29. The language
 2 “can transmit,” however, does not require the transmission of *all* user input. Instead, it simply
 3 acknowledges that the presentation client may transmit user input. The use of “transmit” is
 4 consistent with the following language in the ’745 patent Summary of the Invention: “The system
 5 also includes a communication connection between a requesting client computer and the
 6 application server.” ECF No. 1-1 at col. 6, lines 19-21. It also comports with a preferred
 7 embodiment which “include[s] the droplet presentation client” and describes the presentation
 8 client as “a generic, platform independent application program that processes user interface
 9 specifications received from the application server [] and *routes* user driven events back to the
 10 application server.” *Id.* at col. 27, lines 11-17 (emphasis added).

11 In sum, the Court finds that the “remotely stored” and “transmit” language accords with
 12 the summary, specification, and claims of the ’745 patent. The Court, therefore, construes the
 13 terms “presentation client program code” and “presentation client” as “platform independent
 14 software, running on a client computer, that can present remotely stored applications and that can
 15 transmit user input to remotely stored applications.”

16 **H. “Computer Program Code Segments Embedded with Informational Content
 17 Stored at a Second of Said Plurality of Server Computers” (Claim 26)**

| Droplets’s Proposed Construction | Defendants’ Proposed Construction |
|--|-----------------------------------|
| Plain meaning or “instructions for a computer to execute embedded with informational content.” | Indefinite |

22 “Pursuant to § 112 of the Patent Act, to be sufficiently definite, a patent specification must
 23 conclude with one or more claims particularly pointing out and distinctly claiming the subject
 24 matter which the applicant regards as his invention.” *Power-One, Inc. v. Artesyn Technologies,
 25 Inc.*, 599 F.3d 1343, 1350 (Fed. Cir. 2010) (citing 35 U.S.C. § 112, ¶ 2). The definiteness
 26 requirement “focuses on whether the claims, as interpreted in view of the written description,
 27 adequately perform their function of notifying the public of the [scope of the] patentee’s right to

1 exclude.” *Honeywell Int'l, Inc. v. Int'l Trade Comm'n*, 341 F.3d 1332, 1338 (Fed. Cir. 2003)
2 (citation and internal quotation marks omitted).

3 To comport with Section 112’s definiteness requirement, the boundaries of the claim must
4 be discernible to a skilled artisan based on the language of the claim, the specification, and the
5 prosecution history, and the knowledge in the relevant field of art. *See id.* 1338-1340;
6 *Haemonetics Corp. v. Baxter Healthcare Corp.*, 607 F.3d 776, 783 (Fed. Cir. 2010). A claim is
7 indefinite when it is “not amenable to construction or [is] insolubly ambiguous.” *Datamize LLC v.*
8 *Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005). “A claim is not indefinite merely
9 because it poses a difficult issue of claim construction.” *Power-One*, 599 F.3d at 1350 (citation
10 omitted). “Rather, if the meaning of the claim is discernible, even though the task may be
11 formidable and the conclusions may be one over which reasonable persons will disagree, . . . the
12 claim [is] sufficiently clear to avoid invalidity on indefiniteness grounds.” *Id.* (citation and
13 internal quotation marks omitted). “An accused infringer must thus demonstrate by clear and
14 convincing evidence that one of ordinary skill in the relevant art could not discern the boundaries
15 of the claim based on the claim language, the specification, the prosecution history, and the
16 knowledge in the relevant art.” *Haemonetics*, 607 F.3d at 783. “[C]lose questions of
17 indefiniteness in litigation involving issued patents are properly resolved in favor of the patentee.”
18 *Bancorp Servs., L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1371 (Fed. Cir. 2004) (citation
19 and internal quotation marks omitted).

20 “A determination of claim indefiniteness is a legal conclusion that is drawn from the
21 court’s performance of its duty as the construer of patent claims,” and “like claim construction, [it]
22 is a question of law.” *Atmel Corp. v. Info. Storage Devices, Inc.*, 198 F.3d 1374, 1378 (Fed. Cir.
23 1999). Therefore, it is appropriate for the Court to address indefiniteness issues at the claim
24 construction stage. *See Exxon Research and Eng’g Co. v. U.S.*, 265 F.3d 1371, 1376 (Fed. Cir.
25 2001).

26 **1. “Embedded with Informational Content”**

27 Defendants argue that “layers of indefiniteness plague ‘computer program code segments
28 embedded with informational content.’” ECF No. 404 at 30. They assert that “one of ordinary

1 skill in the art does not know what is the substrate and what is the embedded material.” *Id.* In
2 other words, one of ordinary skill would not know whether (1) “the code is embedded within the
3 information,” (2) “the information is embedded within the code,” or (3) “the information and the
4 code are peers, both embedded ‘with’ each other inside something else. *Id.*

5 In light of the specification, however, the term can be construed as “instructions for a
6 computer to execute embedded within informational content.” *See Power-One*, 599 F.3d at 1350
7 (“[I]f the meaning of the claim is discernible, . . . the claim [is] sufficiently clear to avoid
8 invalidity on indefiniteness grounds.”). The Court’s construction is based on the patent’s repeated
9 disclosure of embodiments with computer program code embedded *within* informational content.
10 ECF No. 408 at 17-18; *see, e.g.*, ECF No. 1-1 at col. 4, lines 48-51 (“In one embodiment, a
11 method for delivering the interactive links includes storing at a first remote source (e.g., a content
12 provider) informational content (e.g., applications and information) having computer program
13 code embedded therein.”); *id.* at col. 4, lines 54-62; *id.* at col. 6, lines 7-9; *id.* at col. 6, lines 21-
14 24.³ This consistent disclosure, coupled with an absence of embodiments where the information is
15 embedded within code or the information and code are both embedded inside something else,
16 affords those skilled in the art “reasonable certainty” that the invention encompasses code
17 embedded *within* informational content. *See Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S.
18 898, 910 (2014) (Section 112 “require[s] that a patent’s claims, viewed in light of the specification
19 and prosecution history, inform those skilled in the art about the scope of the invention with
20 reasonable certainty.”).

21 **2. “Informational Content”**

22 Defendants also argue that “one of ordinary skill in the art would not know what
23 ‘informational content’ is in claim 26.” ECF No. 404 at 41. Contrary to Defendants’ assertions,
24 however, claim 26 provides context which explains the nature of the recited informational content.
25 In particular, the claim discloses that “computer program code segments” embedded within
26

27 _____
28 ³ In addition to these explicit examples, there are also several examples of language which
describe “links” and “droplets” contained within informational content. *See, e.g.*, ECF No. 1-1 at
col. 5, lines 10-17; *id.* at col. 8, lines 13-15; *id.* at col. 8, lines 37-40; *id.* at col. 14, lines 36-42.

“informational content” is delivered to a requesting client computer which “retriev[es] *presentational information*” and then “present[s] at each of said client computers, . . . said applications and said *first information* based on said *presentational information*. ” Defendants have not established by clear and convincing evidence that “informational content” is insolubly ambiguous. *Datamize*, 417 F.3d at 1347 (Fed. Cir. 2005) (A claim is indefinite when it is “not amenable to construction or [is] insolubly ambiguous.”).

In sum, the Court rejects Defendants’ argument that the term at issue is indefinite and construes the term as “instructions for a computer to execute embedded within informational content.”

I. “Application” (Claims 1, 17, 26)

The parties agree that the term “application” should be construed to mean “a software program that executes specific tasks for an end user.” ECF No. 368-1 at 2. The Court adopts this construction.

CONCLUSION

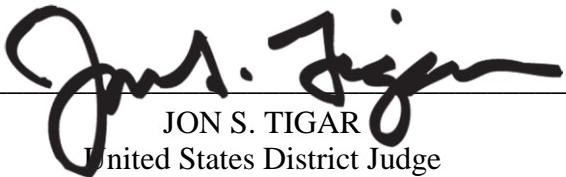
The court construes the eight disputed terms as follows:

| Disputed Term(s) | Construction |
|---|---|
| “interactive link” “link” | “computer code that (1) retrieves and presents applications and/or information stored at remote locations across the network when selected by an end user, and (2) includes facilities for restoring previous operating states of the application as the application is represented at a user’s computer. An interactive link cannot be a bookmark, cookie, shortcut, hyperlink or Internet address (URL).” |
| “computer program code” “program code” | “Computer Program Code” and “Program Code” have their plain meaning. However, a “web address” or “hyperlinks” cannot be “computer program code” or “program code” |
| “operating environment” | operating system, user interface, or hardware capabilities” |

| | | |
|----|--|---|
| 1 | Preamble to Claim 1: "In a network configured computer processing system having a plurality of client computers and a plurality of host computers, a method for delivering interactive links for presenting applications and information from remote sources on the network, the method comprising: . . ." | Preambles are not limiting. |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | Preamble to Claim 17: "A network configured computer processing system, comprising: . . ." | |
| 6 | | |
| 7 | "presentation information for presenting an application" | Plain meaning. No construction required. |
| 8 | "presentational information" | |
| 9 | | |
| 10 | "presenting applications" | "presenting an interface enabling interaction with an application" |
| 11 | "presenting the application" | |
| 12 | "presenting said invoked application" | |
| 13 | "presenting of the application" | |
| 14 | | |
| 15 | "presentation client program code" | "platform independent software, running on a client computer, that can present remotely stored applications and that can transmit user input to remotely stored applications" |
| 16 | "presentation client" | |
| 17 | | |
| 18 | "computer program code segments embedded with informational content stored at a second of said plurality of server computers" | "instructions for a computer to execute embedded within informational content" |
| 19 | | |
| 20 | "application" | "a software program that executes specific tasks for an end user" |
| 21 | | |

IT IS SO ORDERED.

Dated: December 20, 2019



JON S. TIGAR
United States District Judge